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pute, she must prove that she paid for it with her own separate funds and not with funds coming from her husband, for the reason that, in the absence of this proof, the presumption is that the means of payment came from the husband, does not accord with, and, in fact, is rejected by the decisions in New Jersey, New York, Mississippi and Alabama, on the ground that possession by the wife, as in the case of possession by other persons, is *prima facie* evidence of title, and must stand until the creditors show that she has no title; the *onus probandi* being on the creditors: *Stall v. Fulton*, 1 Vroom 430; *Kluender v. Lynch*, 4 Keys 361; *Gage v. Dauchy*, 34 N. Y. 203; *Bodgett v. Ebbing*, 24 Miss. 245; *Saunders v. Garrett*, 33 Ala. 454. And in Georgia, *Huff v. Wright*, 39 Ga. 41; and in Wisconsin, *Weymouth v. R. R.*, 17 Wis. 550; *Morrison v. Koch*, 32 Id. 254; and in Florida, *Alston v. Rowles*, 13 Fla. 117; and in Illinois, *Manny v. Rixford*, 44 Ill. 129; *Farrell v. Patterson*, 43 Id. 52.

Such a contract resolves itself into a question of fraud, and in all such cases the *onus* is on the party urging the fraud,

and as the law enables her to be the possessor of property, there seems to be no reason why her possession is not *prima facie* evidence of title, hence it appears that on this point the Pennsylvania cases do not accord with principle or the weight of authority.

Notwithstanding this rule in Pennsylvania, that court has held that the wife need not show her title so clear that no doubt exists against it: *Tripner v. Abrahams*, 11 Wr. 220; *Flick v. Devries*, 14 Id. 266; except, perhaps, where she is seeking a specific performance: *Freeman v. Stokes*, 34 Leg. Int. 248. However, in a contest between her husband's creditors and purchasers from her, or alienees of such purchasers for a valuable consideration, the burden is on the creditors to show knowledge or notice of the husband's ownership and creditors' claim on the part of the purchasers, or circumstances which ought to have put such purchasers on their inquiry: *Keichline v. Keichline*, 4 P. F. S. 75; *Keil v. Wolf*, 7 Barr 424; *Hoar v. Axe*, 10 Harris 381.

JNO. F. KELLY.

Bellaire, Ohio.

Supreme Court of Kansas.

NORRIS v. CORKILL.

Where by statute the common-law rule as to married women has been changed so that she alone has the use and disposition of her earnings and property, her husband is not responsible for her torts not committed in his presence or by his direction.

ERROR from Sedgwick County.

This was an action in the District Court of Sedgwick County brought by Lavina Norris against Marsha Corkill and T. D. Corkill, who are husband and wife, for damages for the speaking of certain slanderous words by Marsha Corkill, wife of T. D. Corkill, of the plaintiff, Lavina Norris. The defendant, T. D. Corkill, demurred to the petition as not stating facts sufficient to constitute a cause of action against him. At the February Term

of court for 1884, the cause came on to be heard upon the demurrer of T. D. Corkill to the petition. The court sustained the demurrer and dismissed the case as to T. D. Corkill, to which ruling the defendant excepted and appealed.

G. W. C. Jones and *O. H. Bentley*, for plaintiff in error.

Stanley & Wall, for defendant in error.

The opinion of the court was delivered by

HORTON, C. J.—The question presented in this case is, whether the husband is liable for the slanderous words spoken by his wife when he is not present and in which he in no manner participates.

The rule of the common law makes the husband liable for the torts of his wife committed during coverture. The reason assigned for this liability is that the husband is entitled to the rents and profits of the wife's real estate during coverture and the absolute dominion over her personal property in possession. Another ground of this liability at common law, sometimes given, is that the wife, by her marriage, is entirely deprived of the use and disposal of her property, and can acquire none by her industry; that her person, labor and earnings belong unqualifiedly to the husband: Reeves's Domestic Relations, 3; Tyler on Infancy and Coverture, sec. 233.

Again, the husband also by common law might give the wife moderate correction, for, as he was to answer for her misbehavior, the law thought it reasonable to entrust him with this power of restraining her by domestic chastisement in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer: 1 Blackstone's Com. (Wendell's ed.) 444-445.

Under the provisions of our statute, the reasons assigned for the liability of the husband for the torts of his wife no longer hold good, and therefore, in our opinion, under the changes made by the statute, the liability no longer exists. It is a part of the common law that where the reason of the rule fails, the rule fails with it.

"At common law the husband had control almost absolute over the person of the wife; he was entitled, as the result of their marriage, to her services, and consequently to her earnings; to her goods and chattels; had the right to reduce her choses in action to possession during her life; could collect and enjoy the rents and profits of her real estate, and thus had dominion over her property and became the arbiter of her future. She was in a condition of

complete dependence; could not contract in her own name; was bound to obey him, and her legal existence was merged in that of her husband, so that they were termed and regarded as one person in law:" *Martin v. Robson*, 65 Ill. 129; Tyler on Infancy and Coverture, ch. 19, sect. 216-233.

Under the statute, "The property, real and personal, which any woman in this state may own at the time of her marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to her by descent, devise or bequest, or the gift of any person, except her husband, shall remain her sole and separate property notwithstanding her marriage and not be subject to the disposal of her husband or liable for his debts." Com. Laws of 1879, ch. 62, sect. 1.

Again, "A married woman, while the marriage relation subsists, may bargain, sell and convey her real and personal property and enter into any contract with reference to the same, in the same manner, to the same extent, and with like effect as a married man may in relation to his real and personal property." Sect. 2, said chap. 62.

Further, "Any married woman may carry on any trade or business and perform any labor or services on her sole and separate account, and the earnings of any married woman from her trade, business, labor or services shall be her sole and separate property and may be used and invested by her in her own name." Sect. 4, said chap. 62.

In addition, sect. 3 of said chapter provides that a woman may, while married, sue and be sued in the same manner as if she were unmarried. Therefore, it is not true, under the existing statute, that the wife, by her marriage, is deprived of the use and disposal of her property; nor is she prohibited from acquiring property by her industry. It is not true, under the statute, that the personal property of the wife passes to the husband; nor is he entitled to the rents and profits of her real estate during coverture; nor has he any dominion over her personal property, her labor or her earnings. If she so desires, they are unqualifiedly her own and he cannot interfere with them.

Again, in this state, the common-law power of correction of the wife by the husband is no longer tolerated.

Under the common law the married woman's legal existence was almost entirely ignored. She was sunk into almost absolute non-

entity and rested in almost total disability; but all of this has been changed by the statute, and to-day, in our state, "her brain and hands and tongue are her own, and she should alone be responsible for slanders uttered by herself." *Martin v. Robson, supra*. We think the provisions of our statute change the common-law rule, and thereby discharge the husband from liability for the torts of the wife committed when he is not present and with which he has no connection. The wife stands upon an equality, in this state, in all respects, with the husband. She is alone responsible for her contracts, and should be alone responsible for her words as well as her acts.

We have examined the various authorities conflicting with these views, but, owing to the provisions of our statute, we are not inclined to follow them, and, therefore, think it unnecessary to refer to them.

The judgment of the District Court will be affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME COURT OF GEORGIA.²

SUPREME COURT OF ILLINOIS.³

SUPREME JUDICIAL COURT OF MAINE.⁴

SUPREME JUDICIAL COURT OF WISCONSIN.⁵

ACTION. See *Officer*.

Homicide committed in another State—Administrator.—The homicide of a person in another state on a line of railroad purchased, owned and worked by a railroad company in this state, is actionable in this state, if the action be brought by a person entitled to recover: *Central R. R. v. Swint*, 71 or 72 Ga.

For a homicide done by a railroad company of this state upon a line owned and controlled by it in Alabama, the administrator of the deceased in Alabama for the use of the widow and children, could bring suit in this state by complying with the statutory requirements thereof, and thus having his appointment *quoad hoc* ratified in Georgia; but not otherwise. And if an administrator of the decedent be appointed in Georgia, he may bring the suit for the like uses: *Id*.

¹ Prepared expressly for the American Law Register, from the original opinion filed during Oct. Term 1884. The cases will probably appear in 112 U. S. Rep.

² From J. H. Lumpkin, Esq., Reporter. The cases will probably appear in 71 or 72 Ga. Rep.

³ From Hon. N. L. Freeman, Reporter; to appear in 110 Ill. Rep.

⁴ From J. W. Spaulding, Esq., Reporter; to appear in 76 Me. Rep.

⁵ From Frederic K. Conover, Esq., Reporter; to appear in 61 Wis. Rep.